

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2006-CA-006768-XXXX-MA  
DIVISION: CV-E

INVESTMENT RETRIEVERS, INC,  
Plaintiff,

vs.

[CONSUMER],  
Defendant.

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**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES  
AND COUNTERCLAIMS IN RESPONSE TO  
PLAINTIFF'S AMENDED COMPLAINT FOR BREACH OF CONTRACT  
ANSWER**

The Defendant, [Consumer], more accurately referred to as [Consumer], files this answer to the Plaintiff's Amended Complaint for Breach of Contract and states:

1. Defendant has no knowledge as to the allegations contained in the first Paragraph 1 of the Plaintiff's Amended Complaint and, therefore, denies the same.
2. As to the second Paragraph 1 of the Plaintiff's Amended Complaint, Defendant denies that the Plaintiff is entitled to damages in any amount.
3. As to Paragraph 2 of Plaintiff's Amended Complaint, Defendant admits he resides in Duval County, Florida.
4. As to Paragraph 3 of Plaintiff's Amended Complaint, Defendant denies each and every of the allegations of this paragraph and specifically denies Plaintiff has established by the credit card statements appended to the complaint that Defendant owes any money to Plaintiff.
5. Defendant has no knowledge as to the allegations contained in Paragraph 4 of the Plaintiff's Amended Complaint and, therefore, denies the same. Plaintiff has not established that it is the owner or holder of the subject debt and has not established the subject debt was assigned

to Plaintiff by the original credit card issuer. Further Plaintiff has not established it has been specifically assigned the right to bring a breach of contract or the right to seek attorneys fees and costs.

6. Defendant denies the allegations contained in Paragraphs 5, 6, and 7 of the Plaintiff's Amended Complaint.

7. As to the allegations contained in the second Paragraph 6 of the Plaintiff's Amended Complaint, the Defendant is without knowledge as to the Plaintiff's right to seek attorneys fees pursuant to the purported assignment and credit card documents and, therefore, denies the same.

### **Affirmative Defenses**

#### *First Affirmative Defense-Failure to State a Cause of Action*

8. Plaintiff seeks damages for breach of contract but has failed to attach a legible and enforceable copy of the contract upon which it bases its claims in violation of Rule 1.130, Florida Rules of Civil Procedure. Therefore, Plaintiff has failed to state a cause of action.

#### *Second Affirmative Defense-Failure to State a Cause of Action*

9. Plaintiff has pled it owns and holds the subject debt, however, the only document attached to the Amended Complaint is not payable to Plaintiff. Plaintiff has failed to state a cause of action because it has not attached a complete copy of the alleged assignment from the original obligor in violation of Rule 1.130, Florida Rules of Civil Procedure.

#### *Third Affirmative Defense-Violations of the Florida Consumer Collection Practices Act*

10. Defendant realleges the allegations contained in Paragraphs 1 through 13 and Count One of his Counterclaims below and incorporates them by reference herein.

11. Based upon Plaintiff's violations of the Florida Consumer Collection Practices Act, it is not entitled to the relief sought herein. In the alternative, Defendant is entitled to a set off as to the amounts deemed owed, if any, as a result of the imposition of actual and statutory damages.

#### *Fourth Affirmative Defense-Violations of the Federal Fair Debt Collection Practices Act*

12. Defendant realleges the allegations contained in Paragraphs 1 through 13 and Count Two of his Counterclaims below, and incorporates them by reference herein.

13. Based upon Plaintiff's violations of the Federal Fair Debt Collection Practices Act, it is not entitled to the relief sought herein. In the alternative, Defendant is entitled to a set off as to the amounts deemed owed, if any, as a result of the imposition of actual and statutory damages.

*Fifth Affirmative Defense-Violations of the Florida Deceptive and Unfair Trade Practices Act*

14. Defendant realleges the allegations contained in Paragraphs 1 through 13 and Count Three of his Counterclaims below, and incorporates them by reference herein.

15. Based upon Plaintiff's violations of the Florida Deceptive and Unfair Trade Practices Act, it is not entitled to the relief sought herein. In the alternative, Defendant is entitled to a set off as to the amounts deemed owed, if any, as a result of the imposition of actual and statutory damages.

*Sixth Affirmative Defense-Unjust Enrichment*

16. Defendant realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 13 of his Counterclaims below.

17. According to the exhibits attached to the Amended Complaint, the only benefit received by the Defendant would be the pay off of three credit cards. The Defendant's electronic payments over the years would have paid well more than the benefit received.

18. It appears that the only reason the card stayed active was so that Plaintiff or its successor in interest could continue to charge Defendant for Chase Payment Protector, Chase Direct Alert Renewal, Chase Accidental Death and Dismemberment Insurance, Chase Shopper's Discount, Chase Prestige Infinity, Chase MWI Essentials, Chase Privacy Guard, Chase Hotline, over the limit fees and late fees and so the Plaintiff or its successor in interest could collect payments electronically.

19. The subject transaction has been unconscionable and materially unfair to the party of lesser bargaining power and therefore, unenforceable in the interests of equity.

20. Further, Defendant should be entitled to a refund for sums paid in excess of the benefit received.

*Seventh Affirmative Defense - Invasion of Privacy*

21. Defendant realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 13 and Count Four of his Counterclaims below.

22. Based upon Plaintiff's invasion of [Consumer]'s privacy, it is not entitled to the relief sought herein. In the alternative, Defendant is entitled to a set off as to the amounts deemed owed, if any, as a result of the imposition of actual damages.

*Eighth Affirmative Defense - Unconscionability*

23. Defendant realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 13 of his Counterclaims below.

24. According to the exhibits attached to the Amended Complaint, the only benefit received by the Defendant would be the pay off of three credit cards. The Defendant's electronic payments over the years would have paid well more than the benefit received.

25. It appears that the only reason the card stayed active was so that Plaintiff or its successor in interest could continue to charge Defendant for Chase Payment Protector, Chase Direct Alert Renewal, Chase Accidental Death and Dismemberment Insurance, Chase Shopper's Discount, Chase Prestige Infinity, Chase MWI Essentials, Chase Privacy Guard, Chase Hotline, over the limit fees and late fees and so the Plaintiff or its successor in interest could collect payments electronically.

26. Further in its efforts to collect the subject debt, Plaintiff caused [Consumer]'s Social Security number to be published in the public domain.

27. The alleged debt and Plaintiff's means of collecting it have been unconscionable and materially unfair to the party of lesser bargaining power and therefore, unenforceable in the interests of equity.

28. Further, Defendant should be entitled to a refund for sums paid in excess of the benefit received.

WHEREFORE, Defendant requests this Court to enter an order in favor of Defendant, for attorney's fees and costs and for such other and further relief as necessary and appropriate.

### **COUNTERCLAIMS**

The Defendant/Counterclaim Plaintiff, [Consumer] (hereinafter "[Consumer]" or "Defendant," by and through his undersigned attorneys, sues the Plaintiff/Counterclaim Defendant, Investment Retrievers, Inc. (hereinafter "Investment" or "Plaintiff") and alleges:

### **JURISDICTION**

1. This is an action based upon claims arising out of the consumer transaction which is the subject of Investment's Amended Complaint.

2. [Consumer] is seeking declaratory and injunctive relief (temporary and permanent), statutory and actual damages, which exceed \$15,000.00, exclusive of interest, costs and attorney's fees.

### **PARTIES**

3. At all times material hereto, [Consumer] is and was an elderly and financially unsophisticated consumer residing in Jacksonville, Duval County, Florida.

4. At all times relevant hereto, Investment was and is a California corporation doing business in Jacksonville, Duval County, Florida as a consumer debt collector.

5. On or about September 20, 2006, [Consumer] was served with a summons and complaint regarding a debt which purportedly originated in 1999. Insufficient documentation to support a claim was attached to the Plaintiff's Complaint.

6. Investment then filed an Amended Complaint to which it attached, among other documents, an Initial Chase Platinum Visa Credit Line. Included in this document was [Consumer]'s Social Security Number. By attaching this document containing his Social Security Number to the Amended Complaint, Investment has caused private information to be

published in the public domain. Publication of [Consumer]'s Social Security Number was not necessary in the due course of a judicial proceeding or necessarily preliminarily thereto.

7. The other documents attached to the Amended Complaint, included thirteen account statements purportedly representative of an account that extended over six years. According to these statements, the only time the Defendant used the line of credit was to transfer the balance of three other credit cards to a Chase card in 1999 for a total of \$6,268.52. Chase arranged for Defendant's bank account to be automatically debited to pay the account.

8. At the time the credit line was executed, [Consumer] was incapable of understanding the significance of the documents he was signing or the significance of allowing automatic access to his bank account. The only sums in his bank account are his fixed and limited Social Security Retirement and pension benefits.

9. This automatic debit of hundreds of dollars each month continued until it was discontinued by representatives of Urban Jax, a non-profit organization which provides services to elderly individuals who, because of age, are unable to handle their own affairs.

10. [Consumer]'s electronic payments over the years would have paid well more than the benefit received by the pay off of the three credit cards .

11. Based upon the statements to the Amended Complaint, the only reason the card stayed active was so that Plaintiff or its successor in interest could continue to charge Defendant for Chase Payment Protector, Chase Direct Alert Renewal, Chase Accidental Death and Dismemberment Insurance, Chase Shopper's Discount, Chase Prestige Infinity, Chase MWI Essentials, Chase Privacy Guard, Chase Hotline, over the limit fees and late fees and so the Plaintiff or its successor in interest could collect payments electronically.

12. Based upon a review of the thirteen statements attached to the Amended Complaint during the time period from December, 2003 to December, 2004 [Consumer] received no benefit from the card and was charged the following sums for worthless products:

Chase Payment Protector	\$ 1,224.05
Chase Direct Alert	\$ 103.87
Chase Accidental Death and Dismembership Insurance	\$ 103.35

Chase Prestige Infinity, Hotline, Rewards, Shopper's Discount, Privacy Guard, over the limit and late fees	\$ 649.65
	\$ 2,080.92

Total

13. Based upon a review of the statements attached to the Amended Complaint, [Consumer] paid a total of \$3,577.89. Even though he made significant payments, his balance increased and he still received no benefit.

### COUNT ONE

#### **FLORIDA CONSUMER COLLECTION PRACTICES ACT**

[Consumer] brings this action against Investment, seeking statutory damages for its violations of the Florida Consumer Collection Practices Act, *Fla.Stat.*, §559.55, *et seq.* (FCCPA) in the transaction which is the subject of the above-styled case. [Consumer] alleges:

14. [Consumer] realleges the allegations contained in Paragraphs 1 through 13 of his Counterclaims above, inclusive and incorporates the same herein.

15. The FCCPA was enacted to protect Florida consumers from creditors and debt collectors who seek to collect debts through illegal means

16. [Consumer] is a “debtor” and “consumer” within the meaning of FCCPA, §559.55(2), *Fla. Stat.* (2002). Investment alleges [Consumer] owed a “consumer debt” as this phrase is defined by §§559.55(1) and (2), *Fla.Stat.* (2002).

17. Investment is a “creditor” or “debt collector” within the meaning of FCCPA, §559.55(3) or (6), *Fla. Stat.* (2002).

18. Investment filed a lawsuit to collect the debt without sufficient documentation and over eight years after the true benefit was purportedly provided.

19. Investments seeks to collect sums which provided no benefit to [Consumer] and after an unconscionable delay which inured only to Investment’s benefit. Investment and/or its successor in interest allowed the account to continue so it could assess [Consumer] for expensive products that provided no benefit to him and could continue to collect hundreds of dollars a

month through an automatic debit of [Consumer]'s bank account. His bank account included only his fixed and limited Social Security and pension benefits.

20. Further, Investment attached a document to the complaint which contained his Social Security Number leaving him susceptible to identity theft.

21. The FCCPA prohibits creditors from claiming, attempting or threatening to enforce a debt when such a person knows that the debt is not legitimate or assert the existence of some other legal right when such person knows that the right does not exist. *See* § 559.72 (9), Fla. Stat. (2002). Investment knew or should have known that it did not have sufficient documentation to support its claims and/or knew or should have known that [Consumer] has paid back any sums for benefits actually received and has been paying junk charges and interest on junk charges for many years.

22. Investment knew or should have known that it did not have a legitimate litigation purpose in publishing [Consumer]'s Social Security Number in the public domain.

23. Investment's action as described above violates the Florida Consumer Collections Practices Act, §559.55, Fla. Stat. *et seq.*

24. As a result of the above-referenced violations of the Act, [Consumer] has been subjected to an unwarranted and illegal collection activities and the unjust loss of his fixed and limited income, and therefore, has been harmed. He has also become susceptible to identity theft.

25. As a result of these violations, Investment is liable to [Consumer] for actual damages or \$1,000.00, whichever is greater, together with court costs and attorneys fees, as provided by Florida Statutes §559.77.

26. [Consumer] reserves the right, pursuant to Florida Statute §768.72 (1991), to amend this action to add a prayer for punitive damages upon a reasonable showing by evidence in the record or proffered providing a reasonable basis for recovery of punitive damages.

27. It has been necessary for [Consumer] to retain counsel including Jacksonville Area Legal Aid, Inc., a nonprofit law firm which provides free legal services to the indigent and



working poor, to prosecute civil litigation based upon the Act. His counsel has incurred and will incur costs and other related expenses in prosecuting this action and their counsel is entitled to reimbursement of their costs and attorneys fee's pursuant to §559.77, Fla. Stat..

WHEREFORE, [Consumer] requests this Court to enter a judgment against Investment as follows:

- A. Awarding him statutory damages as provided by §559.77, Fla. Stat.;
- B. Awarding attorney's fees and costs; and
- C. Granting such other and further relief as may be deemed just and proper.

## **COUNT TWO**

### **FEDERAL FAIR DEBT COLLECTION PRACTICES ACT**

28. [Consumer] brings this action against Investment, seeking statutory damages for its violations of the Federal Fair Debt Collections Practices Act, 15 U.S.C. §1692, *et seq.* (FDCPA) in the transaction which is the subject of the above-styled case. [Consumer] alleges:

29. [Consumer] realleges the allegations contained in Paragraphs 1 through 13, of his Counterclaims above and incorporates the same herein.

30. The FDCPA was enacted to protect all consumers from debt collectors who seek to collect debts through illegal means and who engage in unfair and/or deceptive practices during the collection of a debt.

31. [Consumer] is a “consumer” within the meaning of FDCPA, 15 U.S.C. §1692a(3). Investment alleges [Consumer] owes a “debt” as this phrase is defined by 15 U.S.C. §1692a(5).

32. Investment is a “debt collector” within the meaning of FDCPA, 15 U.S.C. §1692a(6).

33. In connection with the subject transaction, Investment violated FDCPA by engaging in unfair practices in connection with the collection of the subject debt as is more particularly described in Paragraphs 5 through 13 above in violation of 15 U.S.C. §1692f.

34. As a result of the above-referenced violations of the Act, [Consumer] has been subjected to unwarranted and illegal collection activities and, therefore, has been harmed. He has also lost his fixed and limited income and become susceptible to identity theft.

35. As a result of these violations, Investment is liable to [Consumer] for a declaratory judgment that Investment's conduct violated the FDCPA, actual damages, statutory damages, attorneys fees and court costs.

36. It has been necessary for [Consumer] to retain counsel including Jacksonville Area Legal Aid, Inc., a nonprofit law firm which provides free legal services to the indigent and working poor, to prosecute civil litigation based upon the Act. His counsel has incurred and will incur costs and other related expenses in prosecuting this action and his counsel is entitled to reimbursement of their costs and attorneys fee's pursuant to 15 U.S.C. §1692k.

WHEREFORE, [Consumer] requests this Court to enter a judgment against Investment as follows:

- A. Awarding him statutory damages as provided by 15 U.S.C. §1692k;
- B. Awarding attorney's fees and costs as provided by 15 U.S.C. §1692k; and
- C. Granting such other and further relief as may be deemed just and proper.

**COUNT THREE**  
**FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

[Consumer] brings this action against Investment requesting injunctive and declaratory relief and for statutory, punitive and actual damages for its violation of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Fla. Stat., ("FDUTPA") the interpretations of the Federal Trade Commission and the federal courts relating to the Federal Trade Commission Act in connection with the subject alleged debt. [Consumer] alleges:

37. [Consumer] realleges the allegations contained above in Paragraphs 1 through 13 of his Counterclaims above, inclusive and incorporates the same herein by reference.

38. At all times relevant hereto [Consumer] was a "consumer" as defined by §501.203(7), Fla. Stat..

39. At all times relevant hereto, Investment was engaged in "trade or commerce" as defined by §501.203(8), Fla. Stat. as creditor or collector of consumer debt in Jacksonville, Duval County, Florida.

40. Investment is prohibited from engaging in unfair, deceptive or unconscionable acts or practices in the conduct of its consumer transactions.

41. [Consumer] purportedly entered into a consumer credit transaction with Investment and/or its successor in interest and Investment has been attempting to collect a debt related to this transaction.

42. Investment violated the Florida Consumer Collection Practices Act, the Federal Fair Debt Collection Practices Act and invaded [Consumer]'s privacy as it more particularly described in his counterclaims. Violations of Florida consumer protection laws constitute *per se* violations of FDUTPA, therefore, these actions constitute unfair, deceptive and unconscionable actions in violation of the Act.

43. Investment is willfully using, or has willfully used, methods, acts, and practices in its violations of FDUTPA. Through these methods, acts, and practices, Investment has and is victimizing or, alternatively has attempted or is attempting to victimize [Consumer], a senior citizen as that term is defined by §501.2077(1)(a), Fla. Stat. Investment committed and is committing such violations when it knew or should have known that its conduct was unfair or deceptive.

44. As a direct result of Investment's willful unfair, deceptive and/or unconscionable practices, [Consumer] has been damaged because he has been charged and has paid, through electronic access to his bank account, illegal fees in a consumer transaction for which he received no benefit and has been subjected to illegal collection activities. He has also lost his fixed and limited income and become susceptible to identity theft.

45. [Consumer] reserves the right, pursuant to Florida Statute §768.72 (1991), to amend this action to add a prayer for punitive damages upon a reasonable showing by evidence in the record or proffered providing a reasonable basis for recovery of punitive damages.

46. It has been necessary for [Consumer] to retain counseling including Jacksonville Area Legal Aid, Inc., a non-profit law firm which provides free legal services to the indigent and working poor, to prosecute civil litigation based upon the Act. His counsel has incurred and will incur costs and other related expenses in prosecuting this action and their counsel are entitled to reimbursement of their costs and attorneys fee's pursuant to §§501.2105(1),(3) and 501.211, Fla. Stat..

WHEREFORE, [Consumer] requests this Court to enter a judgment against Investment and therein to:

- A. Declare Investment's practices to be in violation of the Florida Deceptive and Unfair Trade Practices Act;
- B. Temporarily and permanently enjoin Investment from assessing illegal fees and costs in its consumer credit transactions;
- C. Permanently enjoin Investment from engaging in deceptive and unfair trade practices;
- D. Award [Consumer] damages as provided by §§501.211(2) and 501.2077(2), Fla. Stat. ;
- E. Award attorney's fees and costs pursuant to Fla. Stat. §§501.2105 and 501.211, Fla. Stat.; and
- F. Grant such other and further relief as may be deemed just and proper.

**COUNT FOUR**  
**Invasion of Privacy**

47. [Consumer] hereby incorporates by reference the allegations of Paragraphs 1 through 13 of his Counterclaims, inclusive and incorporates the same herein by reference.

48. This is an action for actual damages, costs, and attorney's fees.

49. Investment has caused [Consumer]'s Social Security Number to be published in a public document. By attaching a document containing his Social Security Number to the

Amended Complaint, Investment has caused private information to be published in the public domain. Publication of [Consumer]'s Social Security Number was not necessary in the due course of a judicial proceeding or necessarily preliminarily thereto.

50. As a direct result of Investment's publication of [Consumer]'s private information, he has been damaged because he has become susceptible to identity theft.

51. [Consumer] reserves the right, pursuant to Florida Statute §768.72 (1991), to amend this action to add a prayer for punitive damages upon a reasonable showing by evidence in the record or proffered providing a reasonable basis for recovery of punitive damages.

52. It has been necessary for [Consumer] to retain counseling including Jacksonville Area Legal Aid, Inc., a non-profit law firm which provides free legal services to the indigent and working poor, to prosecute civil litigation based upon the Act. His counsel has incurred and will incur costs and other related expenses in prosecuting this action and their counsel are entitled to reimbursement of their costs and attorneys fee's pursuant to §§501.2105(1),(3) and 501.211, Fla. Stat.

WHEREFORE, [Consumer] requests this Court to enter a judgment against Investment and therein to:

- a. Declare Investment's actions in connection with the subject transaction illegal;
- b. Denying Plaintiff's request for damages for a purported breach of contract; and
- c. Award him costs and attorneys fees, and any other and further relief as this Court deems equitable.

**DEMAND FOR JURY TRIAL**

Defendant/Counterclaim Plaintiff demands a trial by jury on all counts so triable.

JACKSONVILLE AREA LEGAL AID

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Attorneys for [Consumer]

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this document has been forwarded by U.S. Mail to William M. Lindeman, Esquire, Foster, Lindeman & Klinkbeil, P.A., Attorneys for Plaintiff, P.O. Box 3108, Orlando, Florida 32802 this \_\_\_\_\_ day of February, 2007.

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ATTORNEY